

RESOLUTION NO. 2016-169

**RESOLUTION OF THE CITY COUNCIL APPROVING A REIMBURSEMENT
AGREEMENT BY AND BETWEEN THE CITY OF FAIRFIELD AND THE PACIFIC
FLYWAY FUND**

WHEREAS, the Pacific Flyway Fund has approached the City about establishing the Pacific Flyway Center on property in the Suisun Marsh near I-680 and Gold Hill Road, in unincorporated Solano County and adjacent to, but outside of the City of Fairfield's Urban Limit Line; and

WHEREAS, as proposed, the Pacific Flyway Center would require City services, which cannot be provided without moving the City's urban limit to encompass the Pacific Flyway Center property and annexing the property to the City; and

WHEREAS, before designs and plans can be developed or an application filed for the Pacific Flyway Center, the Pacific Flyway Center wishes the property to be annexed to the City of Fairfield; and

WHEREAS, a vote is required to move the City's urban limit line to accommodate the proposed Pacific Flyway Center; and

WHEREAS, the Pacific Flyway Fund has agreed to reimburse the City for its costs incurred in preparing a ballot measure for the November 2016 election, as well as any legal costs related to pre-zoning and annexation activities.

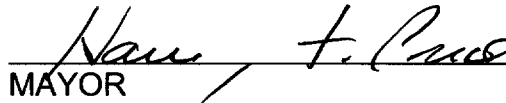
**NOW, THEREFORE, THE COUNCIL OF THE CITY OF FAIRFIELD HEREBY
RESOLVES THAT:**

Section 1. The City Council of the City of Fairfield hereby approves the Reimbursement Agreement (Exhibit A) by and between the City of Fairfield and the Pacific Flyway Fund.

Section 2. The City Council hereby authorizes the City Manager to enter into the Reimbursement Agreement, subject to minor modifications that may be approved by the City Attorney.

PASSED AND ADOPTED this 21st of June, 2016, by the following vote:

AYES:	COUNCILMEMBERS:	<u>Price/Timm/Bertani/Moy/Vaccaro</u>
NOES:	COUNCILMEMBERS:	<u>NONE</u>
ABSENT:	COUNCILMEMBERS:	<u>NONE</u>
ABSTAIN:	COUNCILMEMBERS:	<u>NONE</u>


MAYOR

ATTEST:


CITY CLERK

s:\city manager files\dave w\pacific flyway\staff report and resolution re cost reimbursement\ff- flyway center resolution ik
comments.docx

**CITY OF FAIRFIELD
PACIFIC FLYWAY CENTER
REIMBURSEMENT AGREEMENT**

EXHIBIT A

THIS REIMBURSEMENT AGREEMENT ("Agreement") is entered into this ____ day of _____, 2016, ("Effective Date"), between PACIFIC FLYWAY FUND, a California Non-Profit Organization ("Applicant"), and the CITY OF FAIRFIELD, a municipal corporation ("City").

RECITALS:

This Agreement is predicated upon the following findings:

- A. Applicant owns or intends to acquire approximately 278 acres in Solano County, outside of and adjacent to the City's jurisdictional limits and the Urban Limit Line ("Property").
- B. Applicant desires to maintain the Property predominantly as open space, to preserve habitat and wildlife under a conservation easement, and to use the property for solely recreational, educational, and habitat/wildlife conservation-related purposes ("Project" or "Proposed Project").
- C. Applicant desires to annex the Property into the City. The City has agreed to consider approving a ballot measure to revise the Urban Limit Line to include the Property so that the Property can be annexed into the City under the condition that the Property be maintained in perpetuity as an open space, educational, habitat/wildlife conservation, and recreational facility under a conservation easement.
- D. The Proposed Project will require multiple City actions to accommodate development of the project, including but not limited to the following: 1) Preparation of ballot measure materials by City staff and the City Attorney; 2) Legal services connected with the rezoning of the Property; 3) Legal services connected with annexation of the Property into the City, including the Local Agency Formation Commission (LAFCo) process.

In order to perform the above-described actions, the City shall utilize staff, contract consultants and attorneys with experience reviewing similar projects, on the condition that the Applicant reimburse the City for the costs of the election, its expenses for preparation and review of ballot materials, and legal services related to the rezoning of the Property and the annexation/LAFCo process.

The intent of this Agreement is to set forth procedures and a funding mechanism for the reimbursement to the City for the cost of preparation and legal review of ballot documents and the rezoning and annexation/LAFCo process. The legal consulting services and reimbursable staff time described above are henceforth referred to as "Professional Services". Any additional analysis may only be conducted upon agreement by all parties to this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. Reimbursement. Costs incurred by the City for Professional Services shall be reimbursed by Applicant. These professional services include but are not limited to the following:

- A. Preparation and review of a ballot measure to revise the City's Urban Limit Line. City staff time spent on preparation of ballot measure shall also be a reimbursed cost under this Agreement.
- B. Legal services associated with rezoning of the Property by the City as required by LAFCo.
- C. Legal services associated with annexation of the Property into the City, including the LAFCo process.

In addition to the Professional Services listed above, Applicant shall reimburse the City for the costs of the election, including any charges imposed by the County for placing the measure on the ballot.

It is understood that the payment of reimbursement costs under this Agreement are in addition to any generally applicable processing or development fees (i.e., applicable fees for preparation of documents under the California Environmental Quality Act and necessary legal review) which also may be due to the City. Additional fees related to the legal review of documents associated with any proposed educational or recreational facilities associated with the Project or required environmental and land use documents will be the subject of a future agreement.

2. Deposit. Applicant shall deposit an initial deposit of Ten Thousand Dollars (\$10,000) with the City within 15 calendar days of execution of this Agreement. The City will hold the deposit and charge invoices received for the Professional Services and reimbursable staff time described above against the deposit. When the deposit amount is reduced to Two Thousand Dollars (\$2,000) or less, the City shall notify the Applicant, who shall deposit an additional Ten Thousand Dollars (\$10,000) with the City within 15 business days of the notification. In the event that funds remain on deposit at the conclusion of the services contemplated by this Agreement, they shall be refunded to the Applicant.

3. Binding Effect of Agreement. The burdens of this Agreement shall apply to and bind and the benefits of the Agreement inure to the successors in interest to the parties to it.

4. Relationship of Parties. City and Applicant agree that nothing contained herein or in any document executed in connection herewith shall be construed as making Applicant and City joint venturers or partners. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.

5. No Entitlements Granted. Nothing in this Agreement shall provide Applicant with any right to secure approval of any development plan, building permit or other entitlement. It is further agreed that in all matters pertinent to Applicant, the City's attorneys and consultants shall act solely as consultants and legal advisors to the City and shall not act, in any capacity as consultant to, representative of, or agent of the Applicant.

6. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the City and Applicant and its representative and Applicants' successors and assigns. Notice shall be effective on the date it is delivered in person, or the date when the postal authorities indicate the mailing was delivered to the address of the receiving party, but no later than three days after mailing, regardless of actual delivery. Notices shall be sent to the following addresses:

Notice to City:

Karl A. Dumas
Director of Community Development
City of Fairfield
1000 Webster Street
Fairfield CA 94533

Notice to Applicant:

Kenneth H. Hofmann, President
Pacific Flyway Fund
P.O. Box 907
Concord, CA 94522

7. Amendments. No amendment of this Agreement shall be valid or binding unless made in writing, signed, and duly authorized on behalf of both parties.

8. No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties, and it does not, nor is it intended to, create any rights in favor of or obligation owing to any third parties.

9. Integration Clause. This Agreement contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement.

10. Severability Clause. Should any provision of this Agreement ever be deemed to be legally void or unenforceable, all remaining provisions shall survive and be enforceable.

11. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

12. Waiver. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

13. Public Record. This Agreement and all written non-privileged documents prepared pursuant to this Agreement shall be maintained as a public record.

14. Ambiguity. The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

15. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of Solano County in the State of California or in the United States District Court, Eastern District of California, Sacramento, California, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

16. Counterparts. The parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

17. Authority. The person signing this Agreement for Applicant hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Applicant.

18. Termination. In the event that the ballot measure is not successful or the applicant chooses to withdraw its application this Agreement shall automatically be terminated. In the event this Agreement is terminated, Applicant shall be responsible for all costs incurred under this Agreement up until the date that it is terminated.

(SIGNATURES ARE ON FOLLOWING PAGE)

IN WITNESS WHEREOF this Agreement has been executed by the parties on the day and year first above written.

PACIFIC FLYWAY FUND
a California Non-Profit Organization

CITY OF FAIRFIELD
a California municipal corporation

By: _____
Kenneth H. Hofmann, President

David White, City Manager

By: _____

Attest: _____
City Clerk

Approved as to Form

Gregory W. Stepanicich
City Attorney